

**Introduced by Senator O'Connell**

February 23, 1999

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An act to amend Section 25160 of, to amend, repeal, and add Section 25175 to, and to add Section 25250.26 to, the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 606, as introduced, O'Connell. Hazardous waste: transportation: recycling.

(1) Existing law requires any person generating hazardous waste that is transported, or submitted for transportation, for offsite handling, treatment, storage, disposal, or any combination thereof, to complete a manifest prior to the time the waste is transported or offered for transportation and to submit the manifest to the Department of Toxic Substances Control. A generator is required to submit to the department, within 30 days from the date of transport a legible copy of each manifest used.

This bill would exempt a generator from the requirement of submitting a copy of a manifest for any waste transported in compliance with specified procedures for milkrun operations, if the generator, transporter, and facility are all identified by the same EPA identification number on the hazardous waste manifest.

(2) Existing law requires the department to adopt a list of specified hazardous wastes that the department finds are economically and technologically feasible to recycle and authorizes the department, whenever any waste on the list is disposed of by a person, to request, and the producer or

disposer of that waste is required to supply the department with, a specified statement. Under existing law, if, after receipt of the statement, the department makes specified findings, the disposer of the hazardous waste is required to recycle the hazardous waste. A violation of the laws regulating hazardous waste is a crime.

This bill would require the department to adopt regulations to revise that list of hazardous wastes by January 1, 2001, would make those provisions inoperative on the effective date of the regulations, and would repeal those provisions as of the first January 1 subsequent to that effective date.

The bill would enact revised provisions, operative 6 months after the effective date of those regulations, which would require that whenever any hazardous waste on the revised list is proposed to be disposed of by a generator, the generator would be required to supply the department with a specified statement. The bill would require the generator of the hazardous waste to recycle the hazardous waste if the department, within 30 days after receipt of the statement, makes specified findings, and the bill would allow a generator to accumulate, onsite, the hazardous waste that is the subject of the statement for a specified period of time.

(3) Existing law defines ‘used oil’ for purposes of the provisions regulating the handling of used oil and provides specified standards of purity for recycled oil, including a specified amount of total polychlorinated biphenyls (PCBs). Existing law requires any person who generates, receives, stores, transfers, transports, treats, or recycles used oil to comply with the hazardous waste control law, except as specified. A generator claiming used oil is exempt from regulation by the department is required to ensure that the used oil is tested and certified as being in compliance with specified standards before the used oil is transported from the generator location. A violation of the laws regulating used oil is a crime.

This bill would require a generator of used oil that is transferred to a used oil recycling, storage, or transfer facility to certify to the facility that the used oil meets the definition of used oil and contains less than a specified concentration of



PCBs. The bill would impose a specified amount of liability upon a generator who submits a false certification.

(4) Since a violation of the bill's requirement concerning recyclable hazardous waste and used oil would be a crime, the bill would impose a state-mandated local program by creating a new crime.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 25160 of the Health and Safety  
2 Code is amended to read:

3 25160. (a) For purposes of this chapter, "manifest"  
4 means a shipping document originated and signed by a  
5 generator of hazardous waste that contains all of the  
6 information required by the department and that  
7 complies with all applicable federal and state regulations.

8 (b) (1) Any person generating hazardous waste  
9 which is transported, or submitted for transportation, for  
10 offsite handling, treatment, storage, disposal, or any  
11 combination thereof, shall complete a manifest prior to  
12 the time the waste is transported or offered for  
13 transportation, and shall designate on that manifest the  
14 facility to which the waste is to be shipped for the  
15 handling, treatment, storage, disposal, or combination  
16 thereof. The manifest shall be completed, as required by  
17 the department. The generator shall provide the  
18 manifest to the person who will transport the hazardous  
19 waste, who is the driver, if the hazardous waste will be  
20 transported by vehicle, or the person designated by the  
21 railroad corporation or vessel operator, if the hazardous  
22 waste will be transported by rail or vessel. The generator  
23 shall use the standard California Uniform Hazardous

1 Waste Manifest supplied by the department for all  
2 shipments of hazardous waste for which a manifest is  
3 required, except as provided in paragraph (2). A manifest  
4 shall only be used for the purposes specified in this  
5 chapter, including, but not limited to, identifying  
6 materials that the person completing the manifest  
7 reasonably believes are hazardous waste. Within 30 days  
8 from the date of transport, or submission for transport, of  
9 hazardous waste, each generator of that hazardous waste  
10 shall submit to the department a legible copy of each  
11 manifest used. The copy submitted to the department  
12 shall contain the signatures of the generator and the  
13 transporter. In lieu of submitting a copy of each manifest  
14 used, a generator may submit an electronic report to the  
15 department meeting the requirements of Section  
16 25160.3.

17 (2) Any person generating hazardous waste which is  
18 transported, or submitted for transportation, for offsite  
19 handling, treatment, storage, disposal, or any  
20 combination thereof, outside of the state, shall complete,  
21 whether or not the waste is determined to be hazardous  
22 by the importing country or state, a standard California  
23 Uniform Hazardous Waste Manifest, or the generator  
24 shall complete, in its own form of manifest, the manifest  
25 required by the receiving state and shall submit a copy of  
26 that manifest to the department within 30 days from the  
27 date of the transport, or submission for transport, of the  
28 hazardous waste. In lieu of submitting a copy of each  
29 manifest used, a generator may submit an electronic  
30 report to the department meeting the requirements of  
31 Section 25160.3.

32 (3) ~~Within~~ (A) *Except as provided in subparagraph*  
33 *(B), within* 30 days from the date of transport, or  
34 submission for transport, of hazardous waste out of state,  
35 each generator of that hazardous waste shall submit to the  
36 department a legible copy of each manifest used. The  
37 copy submitted to the department shall contain the  
38 signatures of the generator, all transporters, excepting  
39 intermediate rail transporters, and the out-of-state  
40 facility operator. If within 35 days from the date of the

1 initial shipment, or for exports by water to foreign  
2 countries, 60 days after the initial shipment, the generator  
3 has not received a copy of the manifest signed by all  
4 transporters and the facility operator, the generator shall  
5 contact the owner or operator of the designated facility  
6 to determine the status of the hazardous waste and to  
7 request that the owner or operator immediately provide  
8 a signed copy of the manifest to the generator. If within  
9 45 days from the date of the initial shipment or, for  
10 exports by water to foreign countries, 90 days from the  
11 date of the initial shipment, the generator has not  
12 received a copy of the signed manifest from the facility  
13 owner or operator, the generator shall submit an  
14 exception report to the department.

15 *(B) A generator is not required to submit to the*  
16 *department a copy of a manifest for any waste*  
17 *transported in compliance with the modified manifest*  
18 *procedures for milkrun operations set forth in Section*  
19 *66263.42 of Title 22 of the California Code of Regulations,*  
20 *or as that regulation may be further amended, if the*  
21 *generator, transporter, and facility are all identified by*  
22 *the same EPA identification number on the hazardous*  
23 *waste manifest.*

24 (4) For shipments of waste that do not require a  
25 manifest pursuant to Title 40 of the Code of Federal  
26 Regulations, the department, by regulation, may  
27 establish manifest requirements that differ from the  
28 requirements of this subdivision. The requirements for an  
29 alternative form of manifest shall ensure that the  
30 hazardous waste is transported by a registered hazardous  
31 waste transporter, that the hazardous waste is tracked,  
32 and that human health and safety and the environment  
33 are protected.

34 (c) (1) The department shall determine the form and  
35 manner in which a manifest shall be completed and the  
36 information that the manifest shall contain. The  
37 information requested on the manifest shall serve as the  
38 data dictionary for purposes of the developing of an  
39 electronic reporting format pursuant to Section 71062 of  
40 the Public Resources Code. The form of each manifest

1 and the information requested on each manifest shall be  
2 the same for all hazardous wastes, regardless of whether  
3 the hazardous wastes are also regulated pursuant to the  
4 federal act or by regulations adopted by the United States  
5 Department of Transportation. However, the form of the  
6 manifest and the information required shall be consistent  
7 with federal regulations.

8 (2) Pursuant to federal regulations, the department  
9 may require information on the manifest in addition to  
10 the information required by federal regulations.

11 (d) (1) Any person who transports hazardous waste in  
12 a vehicle shall have a manifest in his or her possession  
13 while transporting the hazardous waste. The manifest  
14 shall be shown upon demand to any representative of the  
15 department, any officer of the California Highway Patrol,  
16 any local health officer, or any local public officer  
17 designated by the director. If the hazardous waste is  
18 transported by rail or vessel, the railroad corporation or  
19 vessel operator shall comply with Subchapter C  
20 (commencing with Section 171.1) of Chapter 1 of Subtitle  
21 B of Title 49 of the Code of Federal Regulations and shall  
22 also enter on the shipping papers any information  
23 concerning the hazardous waste which the department  
24 may require.

25 (2) Any person who transports any waste, as defined  
26 by Section 25124, and who is provided with a manifest for  
27 that waste shall, while transporting that waste, comply  
28 with all requirements of this chapter, and the regulations  
29 adopted pursuant thereto, concerning the transportation  
30 of hazardous waste.

31 (3) Any person who transports hazardous waste shall  
32 transfer a copy of the manifest to the facility operator at  
33 the time of delivery, or to the person who will  
34 subsequently transport the hazardous waste in a vehicle.  
35 Any person who transports hazardous waste and then  
36 transfers custody of that hazardous waste to a person who  
37 will subsequently transport that waste by rail or vessel  
38 shall transfer a copy of the manifest to the person  
39 designated by the railroad corporation or vessel operator,  
40 as specified by Subchapter C (commencing with Section



1 171.1) of Chapter 1 of Subtitle B of Title 49 of the Code  
2 of Federal Regulations.

3 (4) Any person transporting hazardous waste by  
4 motor vehicle, rail, or water shall certify to the  
5 department, at the time of initial registration and at the  
6 time of renewal of that registration pursuant to this  
7 article, that the transporter is familiar with the  
8 requirements of this section, the department regulations,  
9 and federal laws and regulations governing the use of  
10 manifests.

11 (e) (1) Any facility operator in the state who receives  
12 hazardous waste for handling, treatment, storage,  
13 disposal, or any combination thereof, which was  
14 transported with a manifest pursuant to this section, shall  
15 submit a copy of the manifest to the department within  
16 30 days from the date of receipt of the hazardous waste.  
17 The copy submitted to the department shall contain the  
18 signatures of the generator, all transporters, excepting  
19 intermediate rail transporters, and the facility operator.  
20 In instances where the generator or transporter is not  
21 required by the generator's state or federal law to sign the  
22 manifest, the facility operator shall require the generator  
23 and all transporters, excepting intermediate rail  
24 transporters, to sign the manifest before accepting the  
25 waste at any facility in this state. In lieu of submitting a  
26 copy of each manifest used, a facility operator may submit  
27 an electronic report to the department meeting the  
28 requirements of Section 25160.3.

29 (2) Any treatment, storage, or disposal facility  
30 receiving hazardous waste generated outside this state  
31 may only accept the hazardous waste for treatment,  
32 storage, disposal, or any combination thereof, if the  
33 hazardous waste is accompanied by a completed standard  
34 California Uniform Hazardous Waste Manifest.

35 (3) A facility operator may accept hazardous waste  
36 generated offsite that is not accompanied by a properly  
37 completed and signed standard California Uniform  
38 Hazardous Waste Manifest if the facility operator meets  
39 both of the following conditions:



1 (A) The facility operator is authorized to accept the  
2 hazardous waste pursuant to a hazardous waste facilities  
3 permit or other grant of authorization from the  
4 department.

5 (B) The facility operator is in compliance with the  
6 regulations adopted by the department specifying the  
7 conditions and procedures applicable to the receipt of  
8 hazardous waste under these circumstances.

9 (4) This subdivision applies only to shipments of  
10 hazardous waste for which a manifest is required  
11 pursuant to this section and the regulations adopted  
12 pursuant to this section.

13 (f) A generator, transporter, or facility operator may  
14 comply with the requirements of Sections 66262.40,  
15 66263.22, 66264.71, and 66265.71 of Title 22 of the  
16 California Code of Regulations by storing manifest  
17 information electronically. A generator, transporter, or  
18 facility operator who stores manifest information  
19 electronically shall use the standardized electronic  
20 format and protocol for the exchange of electronic data  
21 established by the Secretary for Environmental  
22 Protection pursuant to Part 2 (commencing with Section  
23 71050) of Division 34 of the Public Resources Code and  
24 the stored information shall include all the information  
25 required to be retained by the department, including all  
26 signatures required by this section.

27 (g) The department shall make available for review,  
28 by any interested party, information regarding the  
29 department's progress in adopting revised regulations  
30 relating to hazardous waste manifests, including specific  
31 requirements for milk run operations set forth in Section  
32 66263.42 of Title 22 of the California Code of Regulations.

33 (h) ~~(4)~~—The department shall make available for  
34 review, by any interested party, the department's plans  
35 for revising and enhancing its system for tracking  
36 hazardous waste for the purposes of protecting human  
37 health and the environment, enforcing laws, collecting  
38 revenue, and generating necessary reports.

39 ~~(2) On or before April 1, 1997, the department shall~~  
40 ~~make available for review, by any interested party,~~



~~information regarding the department's progress in  
revising and enhancing its system for tracking hazardous  
waste.~~

SEC. 2. Section 25175 of the Health and Safety Code is amended to read:

25175. (a) ~~The~~ *On or before January 1, 2001, the*  
department shall ~~prepare and adopt, and may adopt~~  
*regulations to revise when appropriate, a the list adopted*  
*pursuant to this section* of specified hazardous wastes  
~~which~~ *that* the department finds are economically and  
technologically feasible to recycle, taking into  
consideration the quantities of, concentrations of, and  
potential contaminants in, these hazardous wastes, the  
number and location of recycling facilities, and the  
proximity of these facilities to hazardous waste producers.  
The department may list a hazardous waste as recyclable  
only if the department makes a determination that at  
least one commercial recycler in California is ready,  
willing, and able to accept the hazardous waste for  
recycling at the time when the hazardous waste is listed.  
Whenever any waste on the list is disposed of by a person,  
the department may request, and the producer or  
disposer of that waste shall supply the department with,  
a formal, complete, and detailed statement justifying why  
the waste was not recycled. If the request is made of any  
entity listed in Section 25118 other than an individual, the  
statement shall be issued by the responsible management  
of that entity. The department shall keep confidential any  
trade secrets contained in ~~any such~~ *that* statement.

(b) If, after receipt of the statement described in  
subdivision (a), the department finds the recycling of a  
hazardous waste to be economically and technologically  
feasible at the site of production, as determined by the  
site operator, or, if the department provides the name of  
a ready, willing, and able purchaser of the recyclable  
waste, *the department shall issue an order to require the*  
disposer of the hazardous waste ~~shall~~ *to* recycle the  
hazardous waste by either of ~~the above described~~ *these*  
methods. Failure to comply with an order to recycle by  
either of these methods shall result in the assessment of

1 fees for disposal pursuant to Section 25174.1. The director  
2 may establish fees for the disposal of hazardous wastes  
3 determined to be recyclable in amounts which may be up  
4 to two times the base fee paid under the annual fee  
5 schedule established by the director.

6 *(c) This section shall become inoperative on the*  
7 *effective date of the regulations adopted by the*  
8 *department pursuant to subdivision (a) and, as of the first*  
9 *January 1 subsequent to that effective date, this section is*  
10 *repealed, unless a later enacted statute that is enacted*  
11 *before that January 1, deletes or extends the dates on*  
12 *which it becomes inoperative and is repealed.*

13 SEC. 3. Section 25175 is added to the Health and  
14 Safety Code, to read:

15 25175. (a) The department may revise, when  
16 appropriate, the list adopted pursuant to this section of  
17 specified hazardous wastes that the department finds are  
18 economically and technologically feasible to recycle,  
19 taking into consideration the quantities of,  
20 concentrations of, and potential contaminants in, these  
21 hazardous wastes, the number and location of recycling  
22 facilities, and the proximity of these facilities to hazardous  
23 waste producers. The department may list a hazardous  
24 waste as recyclable only if the department makes a  
25 determination that at least one commercial recycler in  
26 California is ready, willing, and able to accept the  
27 hazardous waste for recycling at the time when the  
28 hazardous waste is listed.

29 (b) Whenever any hazardous waste on the list revised  
30 pursuant to subdivision (a) is proposed to be disposed of  
31 by a generator, the generator shall supply the  
32 department with a formal, complete, and detailed  
33 statement justifying why it is not economically or  
34 technologically feasible to recycle the hazardous waste in  
35 the state. The department shall keep confidential any  
36 trade secrets contained in the statement.

37 (c) (1) If, within 30 days after receipt of the statement  
38 described in subdivision (b) from the generator, the  
39 department finds the recycling of a hazardous waste to be  
40 economically and technologically feasible at the site of

1 production, as determined by the site operator, or, if the  
2 department provides the name of a ready, willing, and  
3 able purchaser of the recyclable waste, the department  
4 shall issue an order requiring the generator of the  
5 hazardous waste to recycle the hazardous waste by either  
6 of these methods. If a generator fails to comply with that  
7 order, the department shall assess a fee for the disposal of  
8 that hazardous waste pursuant to paragraph (3).

9 (2) Notwithstanding Section 25123.3, a generator may  
10 accumulate, onsite, the hazardous waste that is the  
11 subject of the statement described in subdivision (b) that  
12 is proposed to be disposed of for 30 days longer than the  
13 generator would otherwise be authorized to store that  
14 hazardous waste pursuant to this chapter, while the  
15 department determines whether the recycling of the  
16 hazardous waste is economically and technologically  
17 feasible.

18 (3) The director shall establish fees for the disposal of  
19 hazardous wastes determined to be recyclable in amounts  
20 that may be up to two times the base fee that would  
21 otherwise be paid under the annual fee schedule  
22 established by the director pursuant to Sections 25174.1  
23 and 25174.6.

24 (d) This section shall become operative on the date six  
25 months after the effective date of the regulations adopted  
26 by the department pursuant to subdivision (a) of Section  
27 25175, as amended by Section 2 of this act.

28 SEC. 4. Section 25250.26 is added to the Health and  
29 Safety Code, to read:

30 25250.26. (a) Every generator of used oil transferred  
31 to a used oil recycling, storage, or transfer facility, shall  
32 submit a certification to the facility that the used oil  
33 transferred meets the definition of used oil pursuant to  
34 subdivision (a) of Section 25250.1. The certification shall  
35 specifically state that the used oil contains  
36 polychlorinated biphenyls (PCBs) at a concentration of  
37 less than 5 ppm in accordance with clause (IV) of  
38 subparagraph (B) of paragraph (1) of subdivision (a) of  
39 Section 25250.1.

1 (b) Any generator that falsely certifies pursuant to  
2 subdivision (a) that the used oil transferred to a used oil  
3 recycling, storage, or transfer facility contains PCBs at a  
4 concentration of less than 5 ppm shall be liable for  
5 damages equal to three times the amount of any costs  
6 incurred by any transporter, facility owner or operator,  
7 or any other person adversely affected by the false  
8 certification, in a civil action that may be brought by the  
9 adversely affected party. A generator who makes a false  
10 certification shall also be liable for the prevailing  
11 plaintiff's reasonable attorney fees and costs.

12 (c) For the purposes of this section, the calculation of  
13 damages shall include any consequential damages caused  
14 by mixing the incorrectly certified PCB-contaminated  
15 used oil with other used oil.

16 (d) Nothing in this section shall affect the right of the  
17 department or any other enforcement agency to institute  
18 an administrative, civil, or criminal action against a  
19 generator that has made a false certification.

20 SEC. 5. No reimbursement is required by this act  
21 pursuant to Section 6 of Article XIII B of the California  
22 Constitution because the only costs that may be incurred  
23 by a local agency or school district will be incurred  
24 because this act creates a new crime or infraction,  
25 eliminates a crime or infraction, or changes the penalty  
26 for a crime or infraction, within the meaning of Section  
27 17556 of the Government Code, or changes the definition  
28 of a crime within the meaning of Section 6 of Article  
29 XIII B of the California Constitution.